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Holders of Trade Claims*

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13 **UNITED STATES BANKRUPTCY COURT**  
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15 **NORTHERN DISTRICT OF CALIFORNIA**  
16  
17 **SAN FRANCISCO DIVISION**

18 In re:  
19 PG&E CORPORATION  
20 -and-  
21 PACIFIC GAS AND ELECTRIC  
22 COMPANY,  
23 Debtors.  
24  Affects PG&E Corporation  
 Affects Pacific Gas and Electric  
25 Company  
 Affects both Debtors  
26 \* *All papers shall be filed in the Lead  
Case, No. 19-30088 (DM).*

Bankruptcy Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

District Case No. 20-cv-01493 (HSG)

**TRADE COMMITTEE'S STATEMENT OF  
ISSUES, DESIGNATION OF ITEMS TO  
BE INCLUDED IN THE RECORD, AND  
CERTIFICATION REGARDING  
TRANSCRIPTS**

27  
28 AD HOC COMMITTEE OF  
HOLDERS OF TRADE CLAIMS,  
Appellant,  
v.  
PG&E CORPORATION, et al.,  
Appellees.

1 NOTICE IS HEREBY GIVEN that the Ad Hoc Committee of Holders of Trade Claims  
2 (the “Trade Committee” or “Appellant”) hereby provides, pursuant to Rule 8009 of the Federal  
3 Rules of Bankruptcy Procedure, the following statement of issues, designation of items to be  
4 included in the record, and certificate regarding transcripts in connection with the Appellant’s  
5 *Notice of Appeal and Statement of Election to Have Appeal Heard by District Court* [D.I. 5844]  
6 (the “Notice of Appeal”). As set forth in the Notice of Appeal, the Appellant appeals from (i) the  
7 *Interlocutory Order Regarding Postpetition Interest* [D.I. 5669] entered on February 6, 2020 (the  
8 “PPI Order”) and (ii) the related *Memorandum Decision Regarding Postpetition Interest* entered  
9 on December 30, 2019 [D.I. 5226] (the “PPI Memorandum” and together with the PPI Order, the  
10 “PPI Memorandum and Order”) by the United States Bankruptcy Court for the Northern District  
11 of California (the “Bankruptcy Court”).

## **STATEMENT OF ISSUES ON APPEAL**

13       Bankruptcy Code section 1129 sets forth the requirements for confirmation of a chapter 11  
14 plan. Section 1129(a)(8) requires that, “[w]ith respect to each class of claims or interests—(A)  
15 such class has accepted the plan; or (B) such class is not impaired under the plan.” Under the  
16 Bankruptcy Code, a class of claims is impaired unless the plan, with respect to each claim in such  
17 class, “leaves unaltered [its] legal, equitable, and contractual rights.” 11 U.S.C. § 1124(1). A “class  
18 that is not impaired,” on the other hand, is “conclusively presumed to have accepted the plan” and  
19 has no right to vote on it. *Id.* § 1126(f).

20        Where an impaired class votes against a chapter 11 plan, if all conditions of section 1129(a)  
21 are satisfied other than section 1129(a)(8), the plan can be confirmed only if it “does not  
22 discriminate unfairly, and is fair and equitable” with respect to each impaired class of claims that  
23 has not accepted the plan. *Id.* § 1129(b)(1). Moreover, for “each impaired class of claims,” section  
24 1129(a)(7) requires that each holder of a claim or interest who has not accepted the plan must  
25 “receive . . . under the plan . . . value . . . that is not less than the amount such holder would receive  
26 . . . if the debtor were liquidated under chapter 7[.]” Section 726(a) of the Bankruptcy Code  
27 provides the order by which estate property shall be distributed to creditors in a chapter 7  
28 liquidation, and provides, as the “fifth” priority, for payment of post-petition interest “at the legal

rate.” In *Onink v. Cardelucci (In re Cardelucci)*, 285 F.3d 1231 (9th Cir. 2002), the Ninth Circuit held that the “legal rate” under section 726(a)(5) was the federal judgment rate provided for in 28 U.S.C. § 1961. See *Cardelucci*, 285 F.3d at 1233.

Appellant’s members hold General Unsecured Claims<sup>1</sup> against the Debtors that are based on contracts that incorporate California state law, which in turn provides that, in the event of breach, interest shall accrue at the rate of 10 percent per annum, unless a different rate is specified in writing. The Debtors’ Plan proposes to pay holders of General Unsecured Claims post-petition interest on such claims at the Federal Judgment Rate (calculated as of the Petition Date as 2.59%). The Plan nevertheless asserts that General Unsecured Claims are unimpaired, and thus have no right to vote for or against the Plan or to challenge the Plan as “discriminating unfair[ly]” or not “fair and equitable” under Bankruptcy Code section 1129(b).

In the PPI Memorandum and Order, the Bankruptcy Court held that General Unsecured Claims were impaired not by the Plan, but instead by section 726(a)(5) of the Bankruptcy Code and its requirement that post-petition interest be paid at the “legal rate.” The issue on appeal is whether, in a bankruptcy case in which the debtor is solvent, Bankruptcy Code section 726(a)(5), which can apply in a chapter 11 bankruptcy case only to “each impaired class of claims,” 11 U.S.C. § 1129(a)(7), may apply to reduce the rate of interest owed to a class of claims that is asserted by the Plan to be unimpaired.

## **DESIGNATION OF RECORD ON APPEAL**

Appellant hereby designates the following items to be included in the record on appeal, which includes all exhibits and addenda attached thereto and filed therewith and all documents incorporated by reference therein:

Item	Filing Date	Docket No. <sup>2</sup>
Amended Declaration of Jason P. Wells in Support of First Day Motions and Related Relief	Feb. 1, 2019	263

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated January 31, 2020* [D.I. 5590] (the "Plan").

<sup>2</sup> Unless otherwise indicated, all references herein to “Docket No.” shall be to the docket maintained in the above-captioned chapter 11 cases.

1	Schedule E/F: Creditors Who Have Unsecured Claims For Non-Individual Debtor PG&E Corporation	Mar. 14, 2019	900
2	Schedule E/F: Creditors Who Have Unsecured Claims For Non-Individual Debtor Pacific Gas and Electric Company	Mar. 14, 2019	906
3	Debtors' Joint Chapter 11 Plan of Reorganization	Sept. 9, 2019	3841
4	Debtors' First Amended Joint Chapter 11 Plan of Reorganization	Sept. 23, 2019	3966
5	Verified Statement of Ad Hoc Committee of Holders of Trade Claims Pursuant to Bankruptcy Rule 2019	Oct. 16, 2019	4214
6	Order Establishing Pre-Confirmation Briefing and Hearing Schedule for Certain Legal Issues	Oct. 31, 2019	4540
7	Debtors' Joint Chapter 11 Plan of Reorganization Dated November 4, 2019	Nov. 4, 2019	4563
8	Debtors' Brief Regarding Applicable Rate of Postpetition Interest on Allowed Unsecured Claims and Joinder of PG&E Shareholders (the " <u>Debtors' Opening Brief</u> ")	Nov. 8, 2019	4624
9	Consolidated Edison Development Inc.'s Reservation of Rights Regarding Postpetition Interest on Unsecured Claims	Nov. 8, 2019	4625
10	Consolidated Opening Brief of the Official Committee of Unsecured Creditors and Other Creditor Groups and Representatives Regarding the Appropriate Postpetition Interest Rate Payable on Unsecured Claim in a Solvent Debtor Case (the " <u>Creditor Groups' Opening Brief</u> ")	Nov. 8, 2019	4634
11	Joinder in Consolidated Opening Brief of the Official Committee of Unsecured Creditors and Other Creditor Groups and Representatives Regarding the Appropriate Postpetition Interest Rate Payable on Unsecured Claims in a Solvent Debtor Case	Nov. 8, 2019	4636
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1	Reservation of Rights of the Ad Hoc Group of Subrogation Claim Holders Regarding the Appropriate Postpetition Interest Rate Payable on Unsecured Claims in a Solvent Debtor Case	Nov. 22, 2019	4840
4	Debtors' Brief in Opposition to Consolidated Opening Brief of Unsecured Creditors and Other Creditor Groups and Representatives Regarding the Appropriate Postpetition Interest Rate Payable on Unsecured Claims in a Solvent Debtor Case; Joinder of PG&E Shareholders (the " <u>Debtors'</u> <u>Responsive Brief</u> " and, together with the Debtors' Opening Brief, the " <u>Debtors' Briefs</u> ")	Nov. 22, 2019	4849
9	Consolidated Reply Brief of the Official Committee of Unsecured Creditors and Other Creditor Groups and Representatives Regarding the Appropriate Postpetition Interest Rate Payable on Unsecured Claims in a Solvent Debtor Case (the " <u>Creditor Groups' Responsive Brief</u> " and, together with the Creditor Groups' Opening Brief, the " <u>Creditor Groups' Briefs</u> ")	Nov. 22, 2019	4855
14	Letter Dated Dec. 5, 2019 in Support of Creditor Groups' Briefs	Dec. 5, 2019	5003
16	Letter Dated Dec. 6, 2019 in Support of Debtors' Briefs	Dec. 6, 2019	5018
18	Memorandum Decision Regarding Postpetition Interest	Dec. 30, 2019	5226
19	First Amended Verified Statement of Ad Hoc Committee of Holders of Trade Claims Pursuant to Bankruptcy Rule 2019	Dec. 10, 2019	5060
22	Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated December 12, 2019	Dec. 12, 2019	5101

1	DOCKET TEXT ORDER (no separate order issued:) For the Make-Whole Optional Redemption issue arguments on January 14, 2020, at 10:00 AM, Debtors and the joining Shareholders will have a total of one hour, including time for rebuttal, to be shared as their counsel agree. The opposing creditor groups will also have one hour, to be shared as their counsel agree. At the conclusion of the hearing the court would like counsel to be prepared to address the questions raised in the Memorandum Decision regarding Postpetition Interest (Dkt. No. 5226), namely whether orders disposing of that issue and the Make-Whole issue should be certified for direct appeal to the court of appeal, certified as final under FRCP 54(b), or both, or neither. (RE: related document(s)[4896] Support Brief/Memorandum filed by Debtor PG&E Corporation). (Montali, Dennis)	Jan. 9, 2020	N/A
13	Trade Committee's Statement in Connection with January 29, 2020 Status Conference	Jan. 27, 2020	5517
14	Debtors' Motion Pursuant to 11 U.S.C. §§ 363(b) and 105(a) and Fed. R. Bankr. P. 6004 and 9019 for Entry of an Order (I) Approving and Authorizing the Debtors to Enter into Restructuring Support Agreement with Consenting Noteholders and Shareholder Proponents and (II) Granted Related Relief	Jan. 27, 2020	5519
19	Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated January 31, 2020	Jan. 31, 2020	5590
21	Limited Objection of the Ad Hoc Committee of Holders of Trade Claims to Debtors' Motion Pursuant to 11 U.S.C. §§ 363(b) and 105(a) and Fed. R. Bankr. P. 6004 and 9019 for Entry of an Order (I) Approving and Authorizing the Debtors to Enter into Restructuring Support Agreement with Consenting Noteholders and Shareholder Proponents and (II) Granted Related Relief	Feb. 3, 2020	5596
26	Interlocutory Order Regarding Postpetition Interest	Feb. 6, 2020	5669
27	Order Establishing Schedule for Disclosure Statement Approval and Plan Confirmation	Feb. 6, 2020	5673

1	[Proposed] Disclosure Statement for Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization	Feb. 7, 2020	5700
2	<b>Hearing Transcripts</b>		<b>Docket No.</b>
3	Transcript of Aug. 13, 2019 Hearing	Aug. 14, 2019	3540
4	Transcript of Sept. 24, 2019 Hearing	Sept. 25, 2019	4003
5	Transcript of Oct. 7, 2019 Hearing	Oct. 8, 2019	4162
6	Transcript of Oct. 23, 2019 Hearing	Oct. 24, 2019	4467
7	Transcript of Dec. 11, 2019 Hearing	Dec. 12, 2019	5085
8	Transcript of Hearing at Jan. 29, 2020 at 10:00 a.m. (PST)	Jan. 30, 2020	5562
9	Transcript of Hearing at Jan. 29, 2020 at 1:30 p.m. (PST)	Jan. 30, 2020	5563
10	Transcript of Feb. 4, 2020 Hearing	Feb. 5, 2020	5634
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15                   Appellant reserves the right to designate additional items for inclusion in the record and/or  
16                   restate issues presented on appeal.

17                   **CERTIFICATE REGARDING TRANSCRIPTS**

18                   Appellant certifies pursuant to Bankruptcy Rule 8009(b)(1) that it is not ordering any  
19                   transcripts. All transcripts have been prepared, are filed on the docket, and have been designated  
20                   in the record.

21  
22                   *[Signature to follow.]*

1 Dated: March 5, 2020

**GIBSON, DUNN & CRUTCHER LLP**

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